

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

**David W. Herbage and John Dailey**

Filed: **January 23, 2004**

Serial No.: **10/763,789**

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Confirmation No.: **7920**

Art Unit: **3641**

Examiner: **Lee, Benjamin P.**

Attorney Docket No.: **A310429.2US**

**For: Stacked Pellet Flare Assembly and Methods of Making and Using the Same**

Commissioner for Patents  
Attn: Office of Petitions  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**RENEWED PETITION UNDER 37 C.F.R. § 1.181**

Dear Sir:

Applicant acknowledges receipt of the Decision on Petition in the above referenced application mailed on April 27, 2007.

In the Decision Analysis, the Office states that "Petitioner is not at the correspondence address of record, and is thus not in a position to know whether the correspondence was received at the correspondence address of record." Applicant reasserts that it is the policy of Wyatt, Tarrant & Combs, LLP ("Firm") that all correspondence related to this application and all patent applications prosecuted by the Firm's patent attorneys are routed through a central docketing clerk in the Firm's Memphis, Tennessee office. This policy is a quality control procedure to assure that all correspondence received from the United States Patent & Trademark Office is date stamped and docketed in a central location, then is routed to the appropriate practitioner in the appropriate office of the Firm. If a piece of correspondence

were to be lost between offices, it would still have been docketed in the Firm's docketing system and reminders in place for filing of a timely response.

Applicant filed its Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action on January 29, 2007. In its Petition, Applicant set forth the facts of its non-receipt of the January 29, 2007 Office Action, but failed to supply a declaration from the docket clerk who is the person with firsthand knowledge of whether the office action was received at the correspondence address. Attorney Sarah Osborn Hill of Wyatt, Tarrant & Combs, LLP, spoke with Attorney Derek Woods of the Office of Petitions after receiving the Decision on Petition. Attorney Woods confirmed that the only missing portion of the original Petition was the declaration of Wyatt, Tarrant & Combs, LLP's docket clerk. Such declaration is attached hereto as *Exhibit 1*.

An allegation that an Office Action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and re-mail the Office action. *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971); MPEP 711.03(c) I(A).

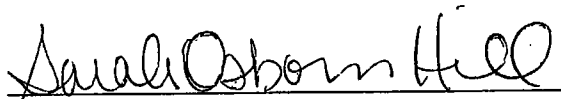
The undersigned affirms that the Office Action mailed June 7, 2006 in the above referenced application was never received by Wyatt, Tarrant, & Combs, LLP. The undersigned completed a thorough search of the file related to this application and reviewed all docketing entries related to this application. A copy of the docket record where the non-received office communication would have been entered had it been received and docketed is attached as *Exhibit 1, Exhibit A*. The results of the search indicate that the Office Action of June 7, 2006 was not received at the correspondence address. As earlier stated, all correspondence related to this application and all patent applications prosecuted by Wyatt, Tarrant & Combs, LLP Patent

Attorneys are routed through a central docketing clerk in the Memphis, Tennessee office. The clerk also conducted a search of this application's file and docket entries related to this application and found no record of the June 7, 2006 Office Action.

Accordingly, Applicant has presented the information required to adequately support its allegation that it did not receive the Office Action of June 7, 2006. Applicant respectfully requests that Examiner withdraw the abandonment and reissue the Office Action with a new period of time for response.

If the Examiner feels that a telephone conference with Applicant's attorney would advance the prosecution of the application, she is invited to call the undersigned at 502-562-7319.

Respectfully submitted,

A handwritten signature in black ink, reading "Sarah Osborn Hill", written over a horizontal line.

Sarah Osborn Hill  
Registration No. 55,267  
June 21, 2007

WYATT, TARRANT & COMBS, LLP  
1715 Aaron Brenner Drive, Suite 800  
Memphis, Tennessee 38120-4367  
Telephone: 502.562.7319  
Facsimile: 901.537.1010

**EXHIBIT 1**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

**David W. Herbage and John Dailey**

Filed: **January 23, 2004**

Serial No.: **10/763,789**

For: **Stacked Pellet Flare Assembly and  
Methods of Making and Using  
the Same**

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Confirmation No.: **7920**

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Commissioner for Patents  
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Alexandria, Virginia 22313-1450

**DECLARATION**

I, Leslie J. Vanlandingham ("Declarant"), hereby state as follows:


Declarant is the Intellectual Property docket clerk at the Memphis, Tennessee office of Wyatt, Tarrant & Combs, LLP ("Firm"). Declarant is competent to testify to the facts stated herein and has personal knowledge of such facts.

The correspondence address associated with this application is the Firm's Memphis, Tennessee address. It is the Firm's policy that all correspondence received from the United States Patent & Trademark Office is first directed to the IP docket clerk in the Firm's Memphis office who enters the correspondence into the docket records.

During the time when the June 7, 2006 Office Action would have been received, Declarant states she was in the office and performing her duties as docket clerk. Declarant has completed a thorough search of the file related to this application and reviewed all docketing entries relating to other applications during the applicable time period. The Office Action of

June 7, 2006 was not in the file nor is there any record of this Office Action or any other Office Actions dated June 7, 2006 entered the docketing system. The results of Declarant's search indicate that the Office Action of June 7, 2006 was not received at Wyatt, Tarrant & Combs. LLP. A copy of the docket record where Office communications for this matter are entered is attached as **Exhibit A**.

I hereby declare that all statements made herein are of my own knowledge, are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of this application or any patent issued thereon.



Leslie J. Vanlandingham  
Docket Clerk

Date: 4/21/07

WYATT, TARRANT & COMBS, LLP  
1715 Aaron Brenner Drive, Suite 800  
Memphis, Tennessee 38120-4367  
Telephone: 901-537-1080  
Facsimile: 901-537-1010

**Matters Listing with Events**

Search for: 310429.000002 Search by: Elite Client Matter Number

Client	Matter Description	Area of Law	Matter ID
Kilgore Flares Company,	U.S. Patent Application for "Stacked Pellet	Patent	A310429.2US

Event Date	Initials	Notes
1/23/2004	RB	Patent application filed (on or after 6/8/1995)
2/23/2004	RB	Postcard: application filed
4/23/2004	RB	Assignment document(s) filed? YES
4/23/2004	RB	Filing receipt received?
4/23/2004	RB	Information Disclosure Statement due (no fee)
4/23/2004	RB	Power of attorney filed?
4/23/2004	RB	Oath or Declaration filed?
7/23/2004	RB	Formal Drawings filed?
1/24/2005	RB	Foreign application filing(s) due-final date
7/25/2005	RB	Publication of patent due
7/25/2005	RB	Status inquiry: application filed 1/23/04
6/19/2006	RB	Status check filed
6/19/2006	RB	Status check
7/19/2006	RB	Confirmation/postcard: status check filed
8/19/2006	RB	Request for status check due
1/18/2007	RB, SH	Notice of Abandonment
3/19/2007	RB, SH	Petition to withdraw holding of Abandonment due-final date - Filed Petition 1/29/07 (SOH)
4/27/2007	SH, RB	Office Action (Decision on Petition)
6/27/2007	SH, RB	Response to final Office Action due (four extensions available)
7/27/2007	SH, RB	Response to final Office Action due (three extensions available)
8/27/2007	SH, RB	Response to final Office Action due (two extensions available)
9/27/2007	SH, RB	Response to final Office Action due (one extension available)
10/29/2007	SH, RB	Notice of Appeal or Request for Continued Examination due-final date
10/29/2007	SH, RB	Response to final Office Action due-final date (no extensions available)
1/23/2024	RB	Patent expires (may be eligible for extensions)